

DOMESTIC VIOLENCE RESPONSE AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Robert M. Spendlove

Senate Sponsor: _____

LONG TITLE**General Description:**

This bill amends provisions relating to the pretrial and postconviction monitoring of a domestic violence defendant.

Highlighted Provisions:

This bill:

- ▶ clarifies the circumstances under which a court may require a defendant who is arrested for or charged with a domestic violence offense to participate in an electronic or another type of monitoring program;
- ▶ requires a court to consider certain factors when determining whether a defendant who is arrested for, charged with, or convicted of a domestic violence offense should be required to participate in an electronic or another type of monitoring program;
- ▶ provides that a court may require a defendant who is convicted of a domestic violence offense to pay the cost of the defendant's electronic or other type of monitoring if the defendant is able;
- ▶ changes the term "domestic violence treatment program" to "domestic violence program";
- ▶ requires the Administrative Office of the Courts to report certain information to the Law Enforcement and Criminal Justice Interim Committee relating to electronic or other type of monitoring of a domestic violence defendant; and



- 28 ▶ makes technical changes.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 **AMENDS:**

35 **62A-2-101**, as last amended by Laws of Utah 2018, Chapters 252 and 316

36 **77-20-3.5**, as last amended by Laws of Utah 2018, Chapter 281

37 **77-36-2.6**, as last amended by Laws of Utah 2017, Chapter 332

38 **77-36-5**, as last amended by Laws of Utah 2017, Chapter 332

39

Be it enacted by the Legislature of the state of Utah:

40 Section 1. Section **62A-2-101** is amended to read:

41 **62A-2-101. Definitions.**

42 As used in this chapter:

43 (1) "Adult day care" means nonresidential care and supervision:

44 (a) for three or more adults for at least four but less than 24 hours a day; and

45 (b) that meets the needs of functionally impaired adults through a comprehensive
46 program that provides a variety of health, social, recreational, and related support services in a
47 protective setting.

48 (2) "Applicant" means a person who applies for an initial license or a license renewal
49 under this chapter.

50 (3) (a) "Associated with the licensee" means that an individual is:

51 (i) affiliated with a licensee as an owner, director, member of the governing body,
52 employee, agent, provider of care, department contractor, or volunteer; or

53 (ii) applying to become affiliated with a licensee in a capacity described in Subsection
54 (3)(a)(i).

55 (b) "Associated with the licensee" does not include:

56 (i) service on the following bodies, unless that service includes direct access to a child
57 or a vulnerable adult:
58

- 59 (A) a local mental health authority described in Section 17-43-301;
- 60 (B) a local substance abuse authority described in Section 17-43-201; or
- 61 (C) a board of an organization operating under a contract to provide mental health or
- 62 substance abuse programs, or services for the local mental health authority or substance abuse
- 63 authority; or
- 64 (ii) a guest or visitor whose access to a child or a vulnerable adult is directly supervised
- 65 at all times.
- 66 (4) (a) "Boarding school" means a private school that:
- 67 (i) uses a regionally accredited education program;
- 68 (ii) provides a residence to the school's students:
- 69 (A) for the purpose of enabling the school's students to attend classes at the school; and
- 70 (B) as an ancillary service to educating the students at the school;
- 71 (iii) has the primary purpose of providing the school's students with an education, as
- 72 defined in Subsection (4)(b)(i); and
- 73 (iv) (A) does not provide the treatment or services described in Subsection (33)(a); or
- 74 (B) provides the treatment or services described in Subsection (33)(a) on a limited
- 75 basis, as described in Subsection (4)(b)(ii).
- 76 (b) (i) For purposes of Subsection (4)(a)(iii), "education" means a course of study for
- 77 one or more of grades kindergarten through 12th grade.
- 78 (ii) For purposes of Subsection (4)(a)(iv)(B), a private school provides the treatment or
- 79 services described in Subsection (33)(a) on a limited basis if:
- 80 (A) the treatment or services described in Subsection (33)(a) are provided only as an
- 81 incidental service to a student; and
- 82 (B) the school does not:
- 83 (I) specifically solicit a student for the purpose of providing the treatment or services
- 84 described in Subsection (33)(a); or
- 85 (II) have a primary purpose of providing the treatment or services described in
- 86 Subsection (33)(a).
- 87 (c) "Boarding school" does not include a therapeutic school.
- 88 (5) "Child" means ~~[a person]~~ an individual under 18 years of age.
- 89 (6) "Child placing" means receiving, accepting, or providing custody or care for any

child, temporarily or permanently, for the purpose of:

(a) finding [~~a person~~] an individual to adopt the child;

(b) placing the child in a home for adoption; or

(c) foster home placement.

(7) "Child-placing agency" means a person that engages in child placing.

(8) "Client" means an individual who receives or has received services from a licensee.

(9) "Day treatment" means specialized treatment that is provided to:

(a) a client less than 24 hours a day; and

(b) four or more [~~persons~~] individuals who:

(i) are unrelated to the owner or provider; and

(ii) have emotional, psychological, developmental, physical, or behavioral dysfunctions, impairments, or chemical dependencies.

(10) "Department" means the Department of Human Services.

(11) "Department contractor" means an individual who:

(a) provides services under a contract with the department; and

(b) due to the contract with the department, has or will likely have direct access to a child or vulnerable adult.

(12) "Direct access" means that an individual has, or likely will have:

(a) contact with or access to a child or vulnerable adult that provides the individual with an opportunity for personal communication or touch; or

(b) an opportunity to view medical, financial, or other confidential personal identifying information of the child, the child's parents or legal guardians, or the vulnerable adult.

(13) "Directly supervised" means that an individual is being supervised under the uninterrupted visual and auditory surveillance of another individual who has a current background screening approval issued by the office.

(14) "Director" means the director of the Office of Licensing.

(15) "Domestic violence" means the same as that term is defined in Section 77-36-1.

(16) "Domestic violence [~~treatment~~] program" means a nonresidential program designed to provide psychological treatment and educational services to perpetrators and victims of domestic violence.

(17) "Elder adult" means [~~a person~~] an individual 65 years of age or older.

- 121 (18) "Executive director" means the executive director of the department.
- 122 (19) "Foster home" means a residence that is licensed or certified by the Office of
123 Licensing for the full-time substitute care of a child.
- 124 (20) "Health benefit plan" means the same as that term is defined in Section
125 [31A-22-619.6](#).
- 126 (21) "Health care provider" means the same as that term is defined in Section
127 [78B-3-403](#).
- 128 (22) "Health insurer" means the same as that term is defined in Section [31A-22-615.5](#).
- 129 (23) (a) "Human services program" means a:
- 130 (i) foster home;
- 131 (ii) therapeutic school;
- 132 (iii) youth program;
- 133 (iv) resource family home;
- 134 (v) recovery residence; or
- 135 (vi) facility or program that provides:
- 136 (A) secure treatment;
- 137 (B) inpatient treatment;
- 138 (C) residential treatment;
- 139 (D) residential support;
- 140 (E) adult day care;
- 141 (F) day treatment;
- 142 (G) outpatient treatment;
- 143 (H) domestic violence treatment;
- 144 (I) child-placing services;
- 145 (J) social detoxification; or
- 146 (K) any other human services that are required by contract with the department to be
147 licensed with the department.
- 148 (b) "Human services program" does not include:
- 149 (i) a boarding school; or
- 150 (ii) a residential, vocational and life skills program, as defined in Section [13-53-102](#).
- 151 (24) "Indian child" means the same as that term is defined in 25 U.S.C. Sec. 1903.

- 152 (25) "Indian country" means the same as that term is defined in 18 U.S.C. Sec. 1151.
- 153 (26) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec. 1903.
- 154 (27) "Licensee" means an individual or a human services program licensed by the
- 155 office.
- 156 (28) "Local government" means a city, town, metro township, or county.
- 157 (29) "Minor" has the same meaning as "child."
- 158 (30) "Office" means the Office of Licensing within the Department of Human Services.
- 159 (31) "Outpatient treatment" means individual, family, or group therapy or counseling
- 160 designed to improve and enhance social or psychological functioning for those whose physical
- 161 and emotional status allows them to continue functioning in their usual living environment.
- 162 (32) "Practice group" or "group practice" means two or more health care providers
- 163 legally organized as a partnership, professional corporation, or similar association, for which:
- 164 (a) substantially all of the services of the health care providers who are members of the
- 165 group are provided through the group and are billed in the name of the group and amounts
- 166 received are treated as receipts of the group; and
- 167 (b) the overhead expenses of and the income from the practice are distributed in
- 168 accordance with methods previously determined by members of the group.
- 169 (33) (a) "Recovery residence" means a home, residence, or facility that meets at least
- 170 two of the following requirements:
- 171 (i) provides a supervised living environment for individuals recovering from a
- 172 substance use disorder;
- 173 (ii) provides a living environment in which more than half of the individuals in the
- 174 residence are recovering from a substance use disorder;
- 175 (iii) provides or arranges for residents to receive services related to their recovery from
- 176 a substance use disorder, either on or off site;
- 177 (iv) is held out as a living environment in which individuals recovering from substance
- 178 abuse disorders live together to encourage continued sobriety; or
- 179 (v) (A) receives public funding; or
- 180 (B) is run as a business venture, either for-profit or not-for-profit.
- 181 (b) "Recovery residence" does not mean:
- 182 (i) a residential treatment program;

183 (ii) residential support; or

184 (iii) a home, residence, or facility, in which:

185 (A) residents, by their majority vote, establish, implement, and enforce policies
186 governing the living environment, including the manner in which applications for residence are
187 approved and the manner in which residents are expelled;

188 (B) residents equitably share rent and housing-related expenses; and

189 (C) a landlord, owner, or operator does not receive compensation, other than fair
190 market rental income, for establishing, implementing, or enforcing policies governing the
191 living environment.

192 (34) "Regular business hours" means:

193 (a) the hours during which services of any kind are provided to a client; or

194 (b) the hours during which a client is present at the facility of a licensee.

195 (35) (a) "Residential support" means arranging for or providing the necessities of life
196 as a protective service to individuals or families who have a disability or who are experiencing
197 a dislocation or emergency that prevents them from providing these services for themselves or
198 their families.

199 (b) "Residential support" includes providing a supervised living environment for
200 ~~[persons]~~ individuals with dysfunctions or impairments that are:

201 (i) emotional;

202 (ii) psychological;

203 (iii) developmental; or

204 (iv) behavioral.

205 (c) Treatment is not a necessary component of residential support.

206 (d) "Residential support" does not include:

207 (i) a recovery residence; or

208 (ii) residential services that are performed:

209 (A) exclusively under contract with the Division of Services for People with
210 Disabilities; or

211 (B) in a facility that serves fewer than four individuals.

212 (36) (a) "Residential treatment" means a 24-hour group living environment for four or
213 more individuals unrelated to the owner or provider that offers room or board and specialized

treatment, behavior modification, rehabilitation, discipline, emotional growth, or habilitation services for ~~[persons]~~ individuals with emotional, psychological, developmental, or behavioral dysfunctions, impairments, or chemical dependencies.

(b) "Residential treatment" does not include a:

(i) boarding school;

(ii) foster home; or

(iii) recovery residence.

(37) "Residential treatment program" means a human services program that provides:

(a) residential treatment; or

(b) secure treatment.

(38) (a) "Secure treatment" means 24-hour specialized residential treatment or care for ~~[persons]~~ individuals whose current functioning is such that they cannot live independently or in a less restrictive environment.

(b) "Secure treatment" differs from residential treatment to the extent that it requires intensive supervision, locked doors, and other security measures that are imposed on residents with neither their consent nor control.

(39) "Social detoxification" means short-term residential services for ~~[persons]~~ individuals who are experiencing or have recently experienced drug or alcohol intoxication, that are provided outside of a health care facility licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, and that include:

(a) room and board for ~~[persons]~~ individuals who are unrelated to the owner or manager of the facility;

(b) specialized rehabilitation to acquire sobriety; and

(c) aftercare services.

(40) "Substance abuse disorder" or "substance use disorder" mean the same as "substance use disorder" is defined in Section [62A-15-1202](#).

(41) "Substance abuse treatment program" or "substance use disorder treatment program" means a program:

(a) designed to provide:

(i) specialized drug or alcohol treatment;

(ii) rehabilitation; or

- 245 (iii) habilitation services; and
- 246 (b) that provides the treatment or services described in Subsection ~~[(40)]~~ (41)(a) to
- 247 ~~[persons]~~ individuals with:
- 248 (i) a diagnosed substance use disorder; or
- 249 (ii) chemical dependency disorder.
- 250 (42) "Therapeutic school" means a residential group living facility:
- 251 (a) for four or more individuals that are not related to:
- 252 (i) the owner of the facility; or
- 253 (ii) the primary service provider of the facility;
- 254 (b) that serves students who have a history of failing to function:
- 255 (i) at home;
- 256 (ii) in a public school; or
- 257 (iii) in a nonresidential private school; and
- 258 (c) that offers:
- 259 (i) room and board; and
- 260 (ii) an academic education integrated with:
- 261 (A) specialized structure and supervision; or
- 262 (B) services or treatment related to:
- 263 (I) a disability;
- 264 (II) emotional development;
- 265 (III) behavioral development;
- 266 (IV) familial development; or
- 267 (V) social development.
- 268 (43) "Unrelated persons" means ~~[persons]~~ individuals other than parents, legal
- 269 guardians, grandparents, brothers, sisters, uncles, or aunts.
- 270 (44) "Vulnerable adult" means an elder adult or an adult who has a temporary or
- 271 permanent mental or physical impairment that substantially affects the ~~[person's]~~ adult's ability
- 272 to:
- 273 (a) provide personal protection;
- 274 (b) provide necessities such as food, shelter, clothing, or mental or other health care;
- 275 (c) obtain services necessary for health, safety, or welfare;

(d) carry out the activities of daily living;
(e) manage the adult's own resources; or
(f) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

(45) (a) "Youth program" means a nonresidential program designed to provide behavioral, substance abuse, or mental health services to minors that:

(i) serves adjudicated or nonadjudicated youth;
(ii) charges a fee for its services;
(iii) may or may not provide host homes or other arrangements for overnight accommodation of the youth;
(iv) may or may not provide all or part of its services in the outdoors;
(v) may or may not limit or censor access to parents or guardians; and
(vi) prohibits or restricts a minor's ability to leave the program at any time of the minor's own free will.

(b) "Youth program" does not include recreational programs such as Boy Scouts, Girl Scouts, 4-H, and other such organizations.

Section 2. Section 77-20-3.5 is amended to read:

77-20-3.5. Conditions for release after arrest for domestic violence and other offenses -- Jail release agreements -- Jail release court orders.

(1) As used in this section:

(a) "Domestic violence" means the same as that term is defined in Section 77-36-1.

(b) "Jail release agreement" means a written agreement described in Subsection (3) that:

(i) limits the contact an individual arrested for a qualifying offense may have with an alleged victim; and

(ii) specifies other conditions of release from jail.

(c) "Jail release court order" means a written court order issued in accordance with Subsection (3) that:

(i) limits the contact an individual arrested for a qualifying offense may have with an alleged victim; and

(ii) specifies other conditions of release from jail.

(d) "Minor" means an unemancipated individual who is younger than 18 years of age.

(e) "Offense against a child or vulnerable adult" means the commission or attempted commission of an offense described in Section 76-5-109, 76-5-109.1, 76-5-110, or 76-5-111.

(f) "Qualifying offense" means:

(i) domestic violence;

(ii) an offense against a child or vulnerable adult; or

(iii) the commission or attempted commission of an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses.

(2) (a) Upon arrest for a qualifying offense and before the ~~[person]~~ individual is released on bail, recognizance, or otherwise, the ~~[person]~~ individual may not personally contact the alleged victim.

(b) ~~[A person]~~ An individual who violates Subsection (2)(a) is guilty of a class B misdemeanor.

(3) (a) After ~~[a person]~~ an individual is arrested for a qualifying offense, the person may not be released before:

(i) the matter is submitted to a magistrate in accordance with Section 77-7-23; or

(ii) the ~~[person]~~ individual signs a jail release agreement in accordance with Subsection (3)(d)(i).

(b) The arresting officer shall ensure that the information presented to the magistrate includes whether the alleged victim has made a waiver described in Subsection (6)(a).

(c) (i) If the magistrate determines there is probable cause to support the charge or charges of one or more qualifying offenses, the magistrate shall determine:

~~[(i)]~~ (A) whether grounds exist to hold the arrested person without bail, in accordance with Section 77-20-1;

~~[(ii)]~~ (B) if no grounds exist to hold the arrested person without bail, whether any release conditions, including electronic monitoring, are necessary to protect the alleged victim; or

~~[(iii)]~~ (C) any bail that is required to guarantee the arrested ~~[person's]~~ individual's subsequent appearance in court.

(ii) In determining whether electronic monitoring is necessary to protect the alleged victim, the magistrate shall, in addition to any other factors the magistrate finds relevant,

consider the factors described in Subsection 77-36-5(2)(b)(ii).

(d) (i) The magistrate may not release ~~[a person]~~ an individual arrested for a qualifying offense before the ~~[person's]~~ individual's initial court appearance before the court with jurisdiction over the offense for which the ~~[person]~~ individual was arrested, unless the arrested ~~[person]~~ individual agrees in writing or the magistrate orders, as a release condition, that, until the arrested ~~[person]~~ individual appears at the initial court appearance, the arrested ~~[person]~~ individual will not:

(A) have personal contact with the alleged victim;

(B) threaten or harass the alleged victim; or

(C) knowingly enter onto the premises of the alleged victim's residence or any premises temporarily occupied by the alleged victim.

(ii) The magistrate shall schedule the appearance described in Subsection (3)(d)(i) to take place no more than 96 hours after the time of the arrest.

(iii) The arrested ~~[person]~~ individual may make the appearance described in Subsection (3)(d)(i) by video if the arrested ~~[person]~~ individual is not released.

(4) (a) If ~~[a person]~~ an individual charged with a qualifying offense fails to appear at the time scheduled by the magistrate under Subsection (3)(d), the ~~[person]~~ individual shall comply with the release conditions described in Subsection (3)(d)(i) until the ~~[person]~~ individual makes an initial appearance.

(b) If the prosecutor has not filed charges against ~~[a person]~~ an individual who was arrested for a qualifying offense and who appears in court at the time scheduled by the magistrate under Subsection (3)(d), or by the court under Subsection (4)(b)(ii), the court:

(i) may, upon the motion of the prosecutor and after allowing the ~~[person]~~ individual an opportunity to be heard on the motion, extend the release conditions described in Subsection (3)(d)(i) by no more than three court days; and

(ii) if the court grants the motion described in Subsection (4)(b)(i), shall order the arrested ~~[person]~~ individual to appear at a time scheduled before the end of the granted extension.

(5) Except as provided in Subsection (4) or otherwise ordered by a court, a jail release agreement or jail release court order expires at midnight after the arrested ~~[person's]~~ individual's initial scheduled court appearance described in Subsection (3)(d)(i).

(6) (a) After an arrest for a qualifying offense, an alleged victim who is not a minor may waive in writing the release conditions described in Subsection (3)(d)(i)(A) or (C). Upon waiver, those release conditions do not apply to the arrested ~~[person]~~ individual.

(b) A court or magistrate may modify the release conditions described in Subsection (3)(d)(i), in writing or on the record, and only for good cause shown.

(7) (a) When an arrested ~~[person]~~ individual is released in accordance with Subsection (3), the releasing agency shall:

(i) notify the arresting law enforcement agency of the release, conditions of release, and any available information concerning the location of the alleged victim;

(ii) make a reasonable effort to notify the alleged victim of the release; and

(iii) before releasing the arrested ~~[person]~~ individual, give the arrested person a copy of the jail release agreement or the jail release court order.

(b) (i) When ~~[a person]~~ an individual arrested for domestic violence is released pursuant to Subsection (3) based on a written jail release agreement, the releasing agency shall transmit that information to the statewide domestic violence network described in Section 78B-7-113.

(ii) When ~~[a person]~~ an individual arrested for domestic violence is released pursuant to Subsections (3) through (5) based upon a jail release court order or if a written jail release agreement is modified pursuant to Subsection (6)(b), the court shall transmit that order to the statewide domestic violence network described in Section 78B-7-113.

(c) This Subsection (7) does not create or increase liability of a law enforcement officer or agency, and the good faith immunity provided by Section 77-36-8 is applicable.

(8) (a) If a law enforcement officer has probable cause to believe that ~~[a person]~~ an individual has violated a jail release agreement or jail release court order, the officer shall, without a warrant, arrest the ~~[person]~~ individual.

(b) Any ~~[person]~~ individual who knowingly violates a jail release court order or jail release agreement executed pursuant to Subsection (3) is guilty as follows:

(i) if the original arrest was for a felony, an offense under this section is a third degree felony; or

(ii) if the original arrest was for a misdemeanor, an offense under this section is a class A misdemeanor.

(c) City attorneys may prosecute class A misdemeanor violations under this section.

(9) ~~[A person]~~ An individual who is arrested for a qualifying offense that is a felony and released in accordance with this section may subsequently be held without bail if there is substantial evidence to support a new felony charge against the ~~[person]~~ individual.

(10) At the time an arrest is made for a qualifying offense, the arresting officer shall provide the alleged victim with written notice containing:

(a) the release conditions described in Subsections (3) through (5), and notice that the alleged perpetrator will not be released, before appearing before the court with jurisdiction over the offense for which the alleged perpetrator was arrested, unless:

(i) the alleged perpetrator enters into a written agreement to comply with the release conditions; or

(ii) the magistrate orders the release conditions;

(b) notification of the penalties for violation of any jail release agreement or jail release court order;

(c) notification that the alleged perpetrator is to personally appear in court on the next day the court is open for business after the day of the arrest;

(d) the address of the appropriate court in the district or county in which the alleged victim resides;

(e) the availability and effect of any waiver of the release conditions; and

(f) information regarding the availability of and procedures for obtaining civil and criminal protective orders with or without the assistance of an attorney.

(11) At the time an arrest is made for a qualifying offense, the arresting officer shall provide the alleged perpetrator with written notice containing:

(a) notification that the alleged perpetrator may not contact the alleged victim before being released;

(b) the release conditions described in Subsections (3) through (5) and notice that the alleged perpetrator will not be released, before appearing before the court with jurisdiction over the offense for which the alleged perpetrator was arrested, unless:

(i) the alleged perpetrator enters into a written agreement to comply with the release conditions; or

(ii) the magistrate orders the release conditions;

(c) notification of the penalties for violation of any jail release agreement or jail release court order; and

(d) notification that the alleged perpetrator is to personally appear in court on the next day the court is open for business after the day of the arrest.

(12) (a) A pretrial or sentencing protective order supercedes a jail release agreement or jail release court order.

(b) If a court dismisses the charges for the qualifying offense that gave rise to a jail release agreement or jail release court order, the court shall dismiss the jail release agreement or jail release court order.

(13) In addition to the provisions of Subsections (3) through (12), because of the unique and highly emotional nature of domestic violence crimes, the high recidivism rate of violent offenders, and the demonstrated increased risk of continued acts of violence subsequent to the release of an offender who has been arrested for domestic violence, it is the finding of the Legislature that domestic violence crimes, as defined in Section 77-36-1, are crimes for which bail may be denied if there is substantial evidence to support the charge, and if the court finds by clear and convincing evidence that the alleged perpetrator would constitute a substantial danger to an alleged victim of domestic violence if released on bail.

(14) The provisions of this section do not apply if the [person] individual arrested for the qualifying offense is a minor, unless the qualifying offense is domestic violence.

Section 3. Section 77-36-2.6 is amended to read:

**77-36-2.6. Appearance of defendant required -- Determinations by court --
Pretrial protective order.**

(1) A defendant who ~~[has been]~~ is arrested for an offense involving domestic violence shall appear in person or by video before the court or a magistrate within one judicial day after the arrest.

(2) A defendant who ~~[has been]~~ is charged by citation, indictment, or information with an offense involving domestic violence but ~~[has not been]~~ is not arrested, shall appear before the court in person for arraignment or initial appearance as soon as practicable, but no later than 14 days after the next day on which court is in session following the issuance of the citation or the filing of the indictment or information.

(3) At the time of an appearance under Subsection (1) or (2), the court shall:

(a) determine the necessity of imposing a pretrial protective order or other condition of pretrial release, including ~~[participating]~~, in accordance with Subsection 77-36-5(2), participation in an electronic or other type of monitoring program to protect the alleged victim;

(b) identify the individual designated by the victim to communicate between the defendant and the victim if and to the extent necessary for family related matters; and

(c) state ~~[its]~~ the court's findings and determination in writing.

(4) ~~[Appearances]~~ An appearance required by this section ~~[are]~~ is mandatory and may not be waived.

Section 4. Section **77-36-5** is amended to read:

77-36-5. Sentencing -- Restricting contact with victim -- Electronic monitoring -- Counseling -- Cost assessed against defendant -- Sentencing protective order -- Continuous protective order.

(1) (a) When a defendant is found guilty of a crime involving domestic violence and a condition of the sentence restricts the defendant's contact with the victim, a sentencing protective order may be issued under Subsection 77-36-5.1(2) for the length of the defendant's probation or a continuous protective order may be issued under Subsection 77-36-5.1(6).

(b) (i) The sentencing protective order or continuous protective order shall be in writing, and the prosecutor shall provide a certified copy of that order to the victim.

(ii) The court shall transmit the sentencing protective order or continuous protective order to the statewide domestic violence network.

(c) Violation of a sentencing protective order or continuous protective order issued ~~[pursuant to]~~ under this Subsection (1) is a class A misdemeanor.

(2) (a) In determining ~~[its]~~ the court's sentence, the court, in addition to penalties otherwise provided by law, may require the defendant to participate in an electronic or other type of monitoring program.

(b) (i) The court shall require the defendant to participate in an electronic or another type of monitoring program if the court determines the monitoring is necessary to protect the victim.

(ii) In determining whether an electronic or another type of monitoring program is necessary to protect the victim, the court shall, in addition to any other factors the court finds relevant, consider:

493 (A) any lethality assessment provided to the court; and

494 (B) whether the defendant was previously arrested for, or convicted of, a domestic
495 violence offense.

496 (c) (i) The court may require the defendant to pay all or part of the costs of an
497 electronic or another type of monitoring program required under this section according to the
498 defendant's ability to pay.

499 (ii) In determining the defendant's ability to pay the court shall consider:

500 (A) the financial resources of the defendant; and

501 (B) the nature of the burden that the payment will impose on the defendant.

502 (3) The court may [~~also~~] require the defendant to pay all or part of the costs of
503 counseling incurred by the victim and any children affected by or exposed to the domestic
504 violence offense, [~~as well as~~] and the costs for the defendant's own counseling.

505 (4) The court shall:

506 (a) assess against the defendant, as restitution, any costs for services [~~or treatment~~]
507 provided to the victim and affected children of the victim or the defendant by the Division of
508 Child and Family Services under Section 62A-4a-106; and

509 (b) order [~~those~~] the costs to be paid directly to the division or [~~its~~] the division's
510 contracted provider.

511 (5) The court may order the defendant to obtain and satisfactorily complete [~~treatment~~
512 ~~or therapy in~~] a domestic violence [~~treatment~~] program, as defined in Section 62A-2-101, that
513 is licensed by the Department of Human Services.

514 (6) The Administrative Office of the Courts shall provide a report to the Law
515 Enforcement and Criminal Justice Interim Committee before November 30, 2020, that
516 includes:

517 (a) the number of cases opened in the state during the preceding fiscal year that involve
518 a domestic violence offense;

519 (b) the number of court orders in cases described in Subsection (6)(a) that require the
520 defendant to participate in an electronic or another type of monitoring program; and

521 (c) for each order described in Subsection (6)(b), whether the order was made under
522 Section 77-20-3.5, 77-36-2.6, or 77-36-5, or another provision of state law.